

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

TERRY LEE DAVIS,)
)
Plaintiff,)
)
vs.) Case No. 2:05-cv-1783-JHH-TMP
)
AULII WILEY, KENNETH L. JONES,)
PRISON HEALTH SERVICES, INC.,)
)
Defendants)

MEMORANDUM OPINION and ORDER

The magistrate judge filed his report and recommendation in the above-styled cause on July 13, 2009, recommending that summary judgment be granted in favor of the defendants on all federal-law claims against them and that all parties be given an opportunity to comment on whether the court should dismiss without prejudice all remaining state-law claims pursuant to 28 U.S.C. § 1367(c). Although the report and recommendation explained to the parties their right to file objections, none has been filed as of this date.

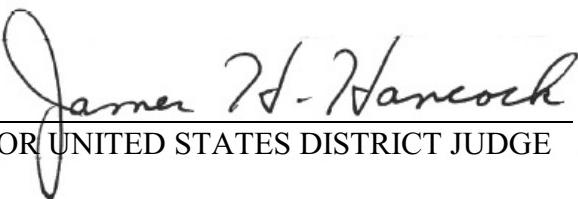
Having now carefully reviewed and considered *de novo* the report and recommendation and all other materials in the court file, the court finds that the report is due to be and hereby is **ADOPTED** and the recommendations **ACCEPTED**. The magistrate judge correctly determined that plaintiff has not exhausted his administrative remedies with respect to his federal claims against Prison Health Services, Inc, and that the undisputed evidence simply does not support an Eighth Amendment claim against defendants Jones and Wiley. Accordingly, by separate order, the court will grant the motions for summary judgment filed separately by defendant Prison Health Services,

Inc., and defendants Kenneth Jones and Aulii Wiley, with respect to the claims against them grounded on federal law. Additionally, due to the Eleventh Amendment immunity claimed by defendants Jones and Wiley in their *official* capacities, all state-law claims against them in their *official* capacities are also due to be dismissed.

Because the motions did not seek judgment with respect to the state-law claims of willful, wanton, or negligent supervision, retention, and training, those claims remain pending against Prison Health Services, Inc, and Jones and Wiley in their *personal* capacities. Nonetheless, the parties are **DIRECTED** to show cause, within fifteen (15) days after this Order, why the remaining state-law claims should not also be dismissed without prejudice, pursuant to 28 U.S.C. § 1367(c), so that plaintiff can pursue them in state court if he so chooses.

As to the summary judgment motions, a separate order will be entered.

DONE this the 31st day of August, 2009.



SENIOR UNITED STATES DISTRICT JUDGE